

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 6, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jack Klein Trust Partnership

Serial No. 75/233,896

Stephen Grubb for Jack Klein Trust Partnership

Laurie Mintzer, Trademark Examining Attorney, Law Office
101 (Ron Williams, Managing Attorney).

Before Seeherman, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Jack Klein Trust Partnership (applicant) seeks to
register DELTA KING and steamboat design in the form shown
below for "fresh vegetables." The application was filed on
January 30, 1997, with a claimed first use date of July 1,
1994.

The Examining Attorney refused registration pursuant to Section 2(d) of the Lanham Trademark Act on the basis that applicant's mark, as applied to fresh vegetables, is likely to cause confusion with the mark DELTA KING, previously registered in typed drawing form for "seeds for agricultural purposes; namely, corn, cotton, grain sorghum (milo), oats, rice, rye, soybeans and wheat." Registration Number 1,898,255.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the goods, we note at the outset that the Examining Attorney has made two incorrect assumptions regarding registrant's goods, namely, that they are vegetable seeds and that they are sold to consumers. In point of fact, registrant's goods are grain seeds, and more importantly, they are for "agricultural purposes," meaning that they are sold to farmers and other professionals. Thus, there are significant differences

between applicant's goods (fresh vegetables) and registrant's goods (grain seeds sold for agricultural purposes). The only common purchasers of both would be farmers and other agricultural professionals. However, we believe that when selecting grain seeds for the production of crops on which their livelihoods depend, farmers and other professionals would exercise a very high level of care.

Turning to a consideration of the marks, we find that while the word portion of applicant's mark is identical to registrant's word mark, the words DELTA KING in applicant's mark have an entirely different meaning than do the words DELTA KING in registrant's mark. In applicant's mark, the words DELTA KING clearly refer to the steamboat which is prominently pictured in applicant's mark. On the other hand, registrant's mark lacks any design feature. One of the meanings of the word "delta" is the soil deposited at the mouth of a river. Webster's Third New International Dictionary (1976). This soil is typically very rich in nutrients. Thus the word DELTA appearing in registrant's mark would bring to mind rich soil, and indirectly productive grain seeds.

In conclusion, given the differences in the goods of registrant and applicant and given the differences in the

connotations of the two marks (not to mention the fact that applicant's mark, unlike registrant's mark, contains a prominent design feature), we find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.

E. J. Seeherman

E. W. Hanak

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial and
Appeal Board